Law Enforcement of the Financial Services Authority against Customer Rights on Fraudulent Promissory Notes Issued by Non-Bank Financial Institutions

Ira Kharisma[1], Lilik Mulyadi[2], Joko Sriwidodo[3]
[1,2,3]Universitas Jayabaya, Jakarta, Indonesia
Email: kharisma.saragih@gmail.com

Abstract

The development of the economy in Indonesia requires large funds so that it is necessary to provide facilities for the provision of funds needed by the community, so that the creation of financial institutions, one of which is a non-bank financial institution. Non-Bank Financial Institutions are business entities in the financial sector that are allowed to collect and distribute funds to the public but not in the form of savings, demand deposits or time deposits. Promissory Notes are commercial securities that are regulated by law, in this case a non-bank financial institution that issues promissory notes as a means of transaction must obtain permission from financial institutions, namely the Financial Services Authority and Bank Indonesia. Based on the background of the problems above that have been explained, the issue that will be raised is how is Law Enforcement from the Financial Services Authority against fraudulent promissory note customers from Non-Bank Financial Institutions that do not have a license. The method used is normative juridical which is carried out to obtain the necessary legal materials related to the object of research. The results of this study are based on the Financial Services Authority Regulation Number 35/POJK.05/2018 concerning Conducting a Financing Company Business spurring the growth of the performance of the financing industry which is considered not optimal.

Keywords: *Financial Services Authority, Bilyet Promissory Note, Non-Bank Financial Institutions.*

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A. INTRODUCTION

Humans as social beings who are zoon *politicon* (Aristotle) that are real in the life of society are not easy. This is because every human being has their own needs and interests which often conflict with one another (Agrawal & Muckley, 2022; Khaq & Hidayat, 2022). As a result of these differences, there is often an imbalance/disharmony in society. This is where the rules for the order of life between humans, which are called laws, are needed in the midst of society (Soekanto, 2016; Ilmih, 2021).

In addition, in order to overcome the imbalance or incompatibility, legal protection is needed. As for what is meant by legal protection itself is to provide protection for human rights that are harmed by other people and this legal protection is given to the community so that they can enjoy all the rights granted by law (Peterson, 2015; Greebel et al., 2015). In other words, legal protection is a legal remedy that must be provided by law enforcement officials to provide a sense of security, both mentally and physically from disturbances and various threats from any party (Soekanto, 1984; Oemar, 2021).

This is basically one of the efforts to realize a welfare state. The welfare state is a concept of government when the state takes an important role in protecting and

prioritizing the economic and social welfare of its citizens. The formulation of the welfare state is not only a concept of nation and state, but is a legal ideal (*rechtside*) and a state ideal (*staatsidee*) (Sudiyana, 2019; Della, 2019).

The realization of the goal of a rule of law state in an effort to create social welfare is always based on (constitutional) law in the framework of welfare for all people. The implementation of state goals demands an active role from the government in all areas of life as an effort to advance people's welfare (Badenhoop, 2020; Dambe et al., 2013). Government participation in promoting people's welfare in the context of a modern state is a state that is able to provide social security and welfare for every citizen as aspired by every individual in a democratic rule of law (Hamidi & Lutfi, 2009; Cranston & Cranston, 1979). This is in accordance with Plato's view that good state administration is based on good legal arrangements (Tutik, 2010). Indonesia is a state of law, this shows that in Indonesia everything is regulated by laws and regulations.

However, in practice, sometimes in the settlement process the non-fulfillment of the implementation of the agreement can be carried out through peace steps without involving the judiciary or by involving a court or third institution acting as a mediator, and of course the decision of the court or third institution should give birth to justice based on norms, legal principles in accordance with the applicable laws and regulations. But what if the opposite situation results in a decision that is detrimental to one of the parties even though the facts at trial describe the opposite situation (Budiono, 2016; Skeva et al., 2020). Relaxation is needed in cultivating shared awareness in realizing the context of justice (Suharso & Retnoningsih, 2009; Herring, 2008).

Economic development in Indonesia requires substantial funds, so it is necessary to expand the means of providing funds needed by the community (Type, 2016; Suryono et al., 2021). Therefore, "The government forms an institution to help business people who need capital, which is called a Financing Institution". Furthermore, in the interaction transformation, most people often hear the term financial institution and will immediately associate it with a bank. In fact, financial institutions are actually not only limited to banks, but there are also various other forms. One of them is a Non-Bank Financial Institution.

Non-bank financial institutions are business entities in the financial sector that are allowed to collect and distribute funds to the public, but not in the form of savings, demand deposits or time deposits. Funds can be raised by issuing securities, then channeling them to finance investment companies that need loans. Banks and non-bank financial institutions in Indonesia's economic activities have transformed into the Modern Transaction era. This is because the strategic role of these two financial institutions is believed to be able to collect and distribute public funds effectively and efficiently towards improving people's living standards (Fuady, 2022).

Non-Bank Financial Institutions themselves have a role to help the business world increase the productivity of goods and services. In addition, expedite the distribution of goods and encourage the opening of jobs. It is clear from the point of

view of the benefits that this institution has provided benefits to society. Types of Non-Bank Financial Institutions in Indonesia are as follows: 1) Money Market; 2) Capital Market; 3) Pawnshops; 4) Savings and Loans Cooperatives; 5) Pension Fund; 6) Venture Capital Companies; 7) Leasing Company; 8) Insurance Company; 9) Factoring Company; and 10) Financial Technology (Fintech).

As stipulated in the Decree, non-bank financial institutions are institutions that carry out financial activities directly or indirectly in collecting funds from the public by issuing securities and then channeling them to invest in various companies that have good prospects. When viewed from the business activities carried out, this institution is similar to a bank. Therefore, this institution is still named as a financial institution.

Non-bank financial institutions have a noble duty for the state, especially in the economic field. With this institution, the value of domestic consumption will move forward and boost the pace of the country's economy. Types of business activities of Non-Bank Financial Institutions in Indonesia include: collecting funds from the public by issuing securities, providing credit facilities to private companies or the government in the short, medium to long term, including company capital and selling shares on the capital market, acting as intermediaries for companies to obtain financial experts and carry out business activities in the financial sector with the approval of the Minister of Finance of the Republic of Indonesia (Simorangkir, 2022).

The number of Non-Bank Financial Institutions (LKBB) has grown rapidly in recent years as venture capital firms, retail and industrial firms have entered the lending business. Non-Bank Financial Institutions (LKBB) also often support investment in property and prepare feasibility, market or industry studies for companies. However, they are usually not allowed to take deposits from the general public and must find other ways to fund their operations such as issuing debt instruments. Here are the general differences: Non-Bank Financial Institutions (LKBB) do not have a banking license even though they provide banking services Non-Bank Financial Institutions cannot accept current accounts Non-Bank Financial Institutions cannot issue self-drawn checks.

In the Law of the Republic of Indonesia Number 21 of 2011 concerning the Financial Services Authority Article 5, namely that the OJK functions to organize an integrated regulatory and supervisory system for all activities in the financial services sector. Whereas Article 6 OJK carries out regulatory and supervisory duties on: financial service activities in the banking sector; financial service activities in the Capital Market sector; and financial service activities in the Insurance sector, Pension Funds, Financing Institutions, and Other Financial Services Institutions. An independent/independent Financial Services Authority is based on the following principles: Independence, namely being independent in making decisions and implementing the functions, duties and authorities of the OJK, while remaining in accordance with the applicable laws and regulations; Legal certainty, namely the principle of a rule of law that prioritizes the basis of laws and regulations and justice in every policy of the implementation of the Financial Services Authority; Public

interest, namely the principle of defending and protecting the interests of consumers and society and advancing the general welfare; Transparency, namely the principle of being open to the public's right to obtain correct, honest and non-discriminatory information about the administration.

The Financial Services Authority, while taking into account the protection of personal and group human rights, as well as state secrets, including secrets as stipulated in laws and regulations; Professionalism, namely the principle that prioritizes expertise in carrying out the duties and authorities of the Financial Services Authority, while still being based on the code of ethics and provisions of laws and regulations; Integrity, namely the principle of adhering to moral values in every action and decision taken in the administration of the Financial Services Authority; and Accountability, namely the principle that determines that every activity and the end result of every activity in the implementation of the Financial Services Authority must be accountable to the public (Suparmono, 2009).

In this case the Financial Services Authority (OJK) as an institution as the organizer of an integrated regulatory and supervisory system for all activities in the financial services sector as already recorded in Article 5 of Law Number 21 of 2011 concerning OJK must provide a form of legal protection for the investors, in order to provide legal protection to investors as consumers in investment products. OJK's authority to deal with companies that make illegal investments in this article, take action to prevent losses for the sake of legal protection for the public in the form of consumers, and legal defense. This article is implemented by the Board of Commissioners in charge of Education & Legal Protection for the public as consumers of financial services by using the Twin Peak Concept, namely preventive and repressive measures in maintaining financial stability through regulation and supervision based on the principle of prudence (Hendro, 2014).

Every action and decision taken in the implementation of the Financial Services Authority; and Accountability, namely the principle that determines that every activity and the final result of every activity in the implementation of the Financial Services Authority must be accountable to the public (Abdulkadir, 2000). Institutional companies that clearly have permission from the Supervisory Service Authority (Financial Services Authority, 2014). This is intended to provide security for the community and investors, given the high cost of the dispute resolution process using a judicial body (Sutedi, 2014).

Based on Bank Indonesia Regulation Number 19/9/PBI/2017 Article 1 paragraph 5 states "Commercial Securities are securities issued by Non-Bank corporations in the form of promissory notes with a maturity of up to 1 (one) year registered at Bank Indonesia.

In general, non-bank financial institutions that issue Promissorynotes are activities to collect funds or assets for a certain time with the aim of making a profit later. This activity involves two parties, namely the investor as the owner of the funds and the Financial Institution company that manages the funds from the investor in order to obtain a profit in accordance with the results invested. Promissory Notes are

commercial securities that are within the provisions of the law, in this case a Non-bank Financial Institution that issues Promissory notes as a transaction tool must obtain permission from Financial Institutions, namely the Financial Services Authority and Bank Indonesia (Shadiliy, 2011).

B. METHOD

The method used is normative juridical which is carried out to obtain the necessary legal materials related to the object of research. The normative juridical approach is an approach that is carried out based on the main legal material by examining the theories, concepts, legal principles and laws and regulations related to this research.

C. RESULT AND DISCUSSION

According to Satjipto Raharjo, law enforcement is essentially an upholding of ideas or concepts about justice, truth, social benefits, and so on. So, law enforcement is an attempt to make these ideas and concepts a reality. Law enforcement is the process of carrying out efforts to uphold or function legal norms in a real way as a guide for actors in traffic or legal relations in the life of society and the state.

Law enforcement in Dutch is called *rechtstoepassing* or *rechtshandhaving* and in English law enforcement includes macro and micro meanings. Macro in nature includes all aspects of community, nation and state life, while in the micro sense it is limited to the process of examination in court including the process of investigation, investigation, prosecution up to the implementation of criminal decisions that have permanent legal force.

Law enforcement is an attempt to realize legal ideas and concepts that the people expect to become reality. Law enforcement is a process that involves many things. Upholding the rule of law is one of the most important prerequisites for realizing good and clean governance. Consistent law enforcement will provide a sense of security, fairness and business certainty. To lay the foundation for law enforcement, the main pillars are law enforcers who are able to carry out their duties with good integrity and dedication.

Law enforcement can run well if law enforcement agencies and officials have the capacity and quality to support law enforcement efforts. Law enforcement is divided into two:

a. Viewed from the point of view of the subject

   In a broad sense, the law enforcement process involves all legal subjects in every legal relationship. Anyone who carries out normative rules or does something or does not do something based on the norms of the applicable law, means he is carrying out or enforcing the rule of law. In a narrow sense, law enforcement is only interpreted as an effort by certain law enforcement officials to guarantee and ensure that a rule of law operates as it should.

b. Viewed from the point of view of the object, namely in terms of law
In a broad sense, law enforcement includes the values of justice which contain the sound of formal rules and the values of justice that exist in society. In a narrow sense, law enforcement only concerns the enforcement of formal and written regulations.
In law enforcement there are 3 elements that are always considered, namely:

a. Legal certainty (*Rechtssichercheit*)
Legal certainty is legal protection against the arbitrary actions of actors who have an interest in the existence of legal certainty, society is more orderly and bound by the law that should apply in concrete events.

b. Justice (*Gerechtigkeit*)
Justice is highly coveted by various parties, but the law does not always identify with justice because it is general and binds everyone.

c. Benefits (*Zweckmassigkeit*)
Benefit is the achievement of a sense of benefit for all parties to the dispute. Law enforcement in dispute resolution. As a systemic process, law enforcement manifests itself as the application of law which involves various structural sub-systems in the form of police officers, prosecutors, courts and correctional institutions. This includes, of course, legal advisory institutions.

In this case the application of the law must be viewed from 3 dimensions, namely: a) The application of the law is seen as a normative system, namely the application of all legal rules that describe social values supported by criminal sanctions; b) The application of law is seen as an administrative system that includes interactions between various law enforcement officials which are the sub-systems of justice above; c) The application of criminal law is a social system, in the sense that in defining a criminal act, various perspectives of thought that exist in society must also be taken into account.

The existence of law enforcement is one of the efforts to create order, security and peace in society, both in terms of prevention and eradication or other actions after a violation of the law has occurred, but sadly in the problem that the author raises that there are court decisions that are not relevant to the rules existing regulations, it was even clear that the perpetrators violated the provisions of the Banking Law and the Articles of Fraud and Money Laundering Crimes, but were acquitted and received no sanctions. This certainly reflects that law enforcement in Indonesia does not think about the interests of the victims and does not see the provisions of the law.

In general, the term promissory notes still sounds foreign to most people. Promissory notes are also known as promissory notes. This letter is practically similar to a debt instrument or bond investment. There are two parties, namely the issuer and the investor. With their respective duties, publishers issue Promissory Notes. Meanwhile, an investor gives his funds in the hope of obtaining profits in the future. As the name implies 'Promissory note', the contents of this letter are a statement of willingness without any conditions to pay money to the parties listed in the letter.

Whereas the Promissory Note that must obtain permission from the OJK and Bank Indonesia (BI) is the criteria for money market securities referred to in Bank Indonesia Regulation (PBI) Number: 19/09/2017 and those that can issue it are Banks participating in the transaction cross-payment, if certain Banks/Parties, corporations that are not in the flow of payments cannot issue Promissory Notes, because the arrangements within Bank Indonesia (PBI) are specifically for Money Market securities.

Then in 2018, Bank Indonesia (BI) issued Regulation of Members of the BI Board of Governors Number 20/1/PADG/2018 concerning Issuance and Transactions of Commercial Papers in the Money Market. Bank Indonesia also explained the definition of Commercial Paper (SBK), namely, for securities issued by corporations that are not banks in the form of promissory notes or promissory notes. As well as having a term of up to 1 (one) year registered at Bank Indonesia.

Indeed, the Promissory Note is not as well-known as other investment instruments such as stocks, mutual funds, bonds, deposits and other investments. However, currently there are very many Non-Bank Financial Institution Companies that issue Promissory Notes that do not have permits, until now there are still those that are still operating as if there was an omission without any firm action from the government, Non-Bank Financial Institutions that do not have permits have carried out business activities in the form of collecting funds from the public which is contrary to the provisions of banking law, because it violates Article 46 of Law No. 7 of 1992 in conjunction with Law no. 10 of 1998 concerning Banking, as well as violating the provisions of Article 59 of Law no. 21 of 2008 concerning Islamic Banking, and is qualified as a crime.

D. CONCLUSION

Based on the Financial Services Authority Regulation Number 35/POJK.05/2018 concerning the Implementation of Financing Company Business, the Financial Services Authority Regulation Number 35/POJK.05/2018 concerning the Implementation of Financing Company Business should be a solution in boosting national economic growth, in the automotive sector (production) , financing (financial industry) and consumption, so that the economy runs and is balanced between production, funding and consumption as well as spurring growth in the performance of the financing industry which is considered not optimal. In addition, this regulation also improves a number of previous provisions by emphasizing prudential aspects and consumer protection. There is an emphasis on the essence that regulations provide benefits to the general public or members of the community, so that these regulations are in accordance with or relevant to the utilitarian theory put forward by Jeremy Bentham that every legal product (statutory regulation) should always pay attention to the purpose of law, namely to provide happiness and benefits for Public.

Article 46 of the Banking Law explains that companies that issue promissory notes or deposit products or the equivalent collect funds from the public in the form of savings that must obtain permission from the Indonesian bank. If a financial

institution company violates this permit, it will be subject to punishment a minimum of 5 (five) years and a maximum of 15 (fifteen) years in prison.

REFERENCES

1. Agarwal, S., & B Muckley, C. (2022). Law Enforcement Spillover Effects in the Financial Sector. *European Financial Management*, *28*(5), 1477-1504.
2. Badenhoop, N. (2020). The Individual Protection Goal in EU Banking Regulation–A Process towards Private Law Enforcement. *Forthcoming in: S Grundmann and P Sirena (eds), European Contract Law in the Banking and Financial Union (Intersentia, 2020)*.
3. Budiono, H., & Moeliono, T. P. (2006). *Asas Keseimbangan bagi Hukum Perjanjian Indonesia: Hukum Perjanjian Berlandaskan Asas-Asas Wigati Indonesia*. Citra Aditya Bakti.
4. Cranston, R., & Cranston, R. (1979). Law Enforcers and Law Enforcement. *Regulating Business: Law and Consumer Agencies*, 11-49.
5. Dambe, K., Hunt, S., Iscenko, Z., & Brambley, W. (2013). Applying Behavioural Economics at the Financial Conduct Authority. *FCA Occasional Paper*, (1).
6. Della Negra, F. (2019). *MiFID II and Private Law: Enforcing EU Conduct of Business Rules* (Vol. 2). Bloomsbury Publishing.
7. Fuady, M. (2002). Hukum tentang Pembiayaan dalam Teori dan Praktek. Bandung: Citra Aditya Bakti.
8. Gatot, S. (2009). *Perbankan dan Masalah Kredit Suatu Tinjauan di Bidang Yuridis*. Jakarta: Rineka Cipta.
9. Greebel, E. L., Moriarty, K., Callaway, C., & Xethalis, G. (2015). Recent key Bitcoin and Virtual Currency Regulatory and Law Enforcement Developments. *Journal of Investment Compliance*.
10. Hamidi, J., & Lutfi, M. (2010). *Hukum Lembaga Kepresidenan Indonesia*. Alumni.
11. Hasan. S. (2011). *Hukum Investasi dan Pasar Modal*. Jakarta: Sinar Grafika.
12. Herring, R., & Carmassi, J. (2008). The Structure of Cross-Sector Financial Supervision. *Financial Markets, Institutions & Instruments*, *17*(1), 51-76.
13. Ilmih, A. A. (2021). Law Enforcement and Prevention of Banking Criminal Actions in Indonesia. *Turkish Journal of Computer and Mathematics Education (TURCOMAT)*, *12*(3), 5733-5744.
14. Jenie, S. I. (2016). Beberapa Perjanjian yang Berkenaan dengan Kegiatan Pembiayaan. *Yogyakarta, Yayasan Penerbit Gajahmada*.
15. Khaq, I. E., & Hidayat, A. (2022). The Law Enforcement against an Illegal Online Loans Platform. *Ius Positum Journal of Law Theory and Law Enforcement*, 85-98.
16. Mahanani, A. E. E., Fitriana, Z. M., Anggriawan, T. P., & Wahyudi, E. (2021). Kausalitas Kesadaran dan Budaya Hukum dalam Membentuk Kepatuhan Hukum Kebijakan Penanggulangan Covid-19. *Widya Pranata Hukum: Jurnal Kajian dan Penelitian Hukum*, *3*(2), 64-74.
17. Mierzewski, M. B., DeSimone, B. S., Hochberg, J. W., & Larkin, B. P. (2010). The Dodd-Frank Act Establishes the Bureau of Consumer Financial Protection as the

Primary Regulatory of Consumer Financial Products and Services. *Banking lJ*, *127*, 722.
18. Oemar, M. (2021). Reconstruction of Law Enforcement against Crime in Banking Based on Justice Value. *Scholars International Journal of Law, Crime and Justice*, *4*(7), 458-464.
19. Peterson, C. L. (2015). Consumer Financial Protection Bureau Law Enforcement: An Empirical Review. *Tul. L. Rev.*, *90*, 1057.
20. Simorangkir. O.P. (2022). *Pengantar Lembaga Keuangan Non-Bank*, Ghalia, Indonesia.
21. Skeva, S., Larmuseau, M. H., & Shabani, M. (2020). Review of Policies of Companies and Databases Regarding Access to Customers' Genealogy Data for Law Enforcement Purposes. *Personalized Medicine*, *17*(2), 141-153.
22. Soekanto, S. (2007). *Pengantar Penelitian Hukum dan Survei.* Jakarta: Universitas Indonesia Press.
23. Soekanto, S. (2012). *Kesadaran Hukum dan Kepatuhan Hukum*. Jakarta: Rajawali.
24. Sudiyana, S. (2019, July). Legal Enforcement Model in Indonesia Capital Market Disputes to Make Substantive Justice. In *International Conference on Banking, Accounting, Management, and Economics (ICOBAME 2018)* (pp. 222-224). Atlantis Press.
25. Suryono, R. R., Budi, I., & Purwandari, B. (2021). Detection of fintech P2P Lending Issues in Indonesia. *Heliyon*, *7*(4), e06782.
26. Tri H., & Conny, T. (2014). *Bank & Insitusi Keuangan Non-Bank di Indonesia*. Yogyakarta: UPP STIM YKPN. Abdulkadir, M., & Rilda, M. (2000). *Segi Hukum Lembaga Keuangan dan Pembiayaan*. Bandung: Citra Aditya Bakti.
27. Tutik, T. T., & SH, M. (2016). *Konstruksi Hukum Tata Negara Indonesia Pasca Amandemen UUD 1945*. Prenada Media.